June 4, 2013

Ms. Wendy Macias
U.S. Department of Education
1990 K Street NW, Room 8017
Washington, DC  20006

Re. Docket ID ED-2012-OPE-0008 Intent to Establish Negotiated Rulemaking Committee

Dear Ms. Macias:

These comments are in response to the April 16, 2013 Federal Register notice (Federal Register Number 2013-08891, as modified by Federal Register Number 2013-11287 on May 13, 2013) soliciting input on topics to be included in the U.S. Department of Education’s upcoming negotiated rulemaking. The Institute for College Access & Success (TICAS) is an independent, non-profit organization that works to make higher education more available and affordable for people of all backgrounds. Through nonpartisan research, analysis, and advocacy, we aim to improve the processes and public policies that can pave the way to successful educational outcomes for students and for society.

The Federal Register notice specifically requests comments on the Department’s plans to convene a committee to develop proposed regulations on gainful employment and other topics related to program integrity and campus reporting. We address some of these issues below, and also recommend modifying current regulations to prevent schools from evading laws designed to protect students and taxpayers. Our main recommendations include:

- **Adequate representation for students and taxpayers.** Ensure sufficient representation of the diverse and traditionally underrepresented interests of students, consumers, and taxpayers in the topics selected for negotiated rulemaking. For program integrity issues in particular, the Department should invite nominations from representatives of students, veterans, consumers, college access, legal aid, workforce preparation programs, and state attorneys general.

- **Gainful employment.** Define gainful employment to protect students and taxpayers from career education programs that overcharge and under-deliver. In particular, the Department’s regulations should:
  - end funding for the worst career education programs in ways that address the court’s ruling and reduce the burden on programs with low borrowing rates;
  - require poorly performing programs to improve to keep receiving federal funds;
  - make the consumer disclosures easier to find, understand and compare;
  - prevent schools from evading accountability under the rule;
  - provide relief to students who were enrolled in programs that lose eligibility for federal funds; and
  - reconsider changes that weakened the gainful employment definition in light of experience and new data since the final regulation was issued in June 2011.
- **Evasion of other program integrity laws.** Strengthen other program integrity rules to prevent the evasion of federal laws on cohort default rates and the 90/10 rule, including:
  - CDR evasion via abuse of forbearance and deferments;
  - 90/10 manipulation through disbursements; and
  - CDR and 90/10 manipulation by combining campuses

- **Collection abuses and debt collection fees.** Take additional steps to improve debt collection, including limiting debt collection fees to collection costs that are bona fide, reasonable, and actually incurred.

- **State authorization.** Federal law requires state authorization in order for schools to be eligible for federal student aid. Federal regulations should be clear about the requirements for meaningful state authorization, including for programs offered online. The Department should consider exempting from the requirement for state authorization of online programs all public colleges or any type of college that spends less than a certain percentage of its revenue on marketing, advertising and recruiting (e.g., less than 10 percent).

These recommendations are in addition to those provided by TICAS in May 2012, in response to the related May 1, 2012 Federal Register notice soliciting negotiated rulemaking recommendations. Those recommendations include:

- **Debit cards.** Students should have a real choice of aid disbursement options, and their student aid funds need to be protected from being eroded by fees.

- **Online fraud.** Carefully target efforts to mitigate fraud to preserve legitimate students’ access to aid. The Department recently announced new verification efforts to help colleges pinpoint likely fraud, but more can be done to reduce fraud without regulation or significant impact on colleges or legitimate students. In fact, the Department’s failure to take these steps is being used by debit card provider Higher One to gain market share. For example, Higher One is offering to search colleges’ aid applicant pools for similarities among applicants which may suggest fraud. The Department can conduct such searches, and is better positioned to do so. Because these services are being offered to colleges as a supplement to their use of Higher One’s disbursement services, the Department’s reticence in this area may have the unintended consequence of pushing more colleges towards using debit cards, and enabling further erosion of students’ aid by fees as a result.

- **False certification.** Update and revise the false certification determination regulations to provide relief for borrowers harmed because their eligibility for aid was falsely certified and to deter schools from engaging in such illegal and abusive activities.

- **Participation rate index (PRI) appeals.** Accept PRI appeals from colleges with low borrowing rates in any year rather than forcing them to wait until they are at imminent risk of losing access to aid. As this issue has taken on greater urgency in the past year, we revisit it at the end of this document.

- **Distressed borrowers.** Ensure that relief is available for financially distressed borrowers and that those who default can get back into repayment and onto more secure financial footing.

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Moving forward with new regulations in each of these areas is critical, but so is finalizing regulations upon which negotiators have already come to consensus. Last year, a negotiating committee developed regulations on a number of topics related to student loans, but only some of those rules – those to improve and streamline income-driven repayment plans and the process for discharging loans to borrowers who become totally and permanently disabled – have been finalized. The Notice of Proposed Rulemaking (NPRM) on a variety of other topics related to student loans has still not be issued, including draft rules establishing standards for “reasonable and affordable” payments for rehabilitating loans and allowances for late-stage delinquency forbearances. The Department must publish these draft rules as soon as possible so the rules can be finalized by November 1, 2013 and go into effect by the 2014-15 academic year.

Student, Consumer and Taxpayer Representation in Negotiating Rulemaking
We urge the Department to ensure sufficient representation of the diverse and traditionally underrepresented interests of students, consumers, and taxpayers in the topics selected for negotiated rulemaking. For instance, in the 2009-2010 negotiated rulemaking on program integrity issues, more than half of the negotiators were employees and representatives of various types of colleges. While the for-profit college sector claimed they were under-represented, fully one quarter of the negotiators were either employed by for-profit colleges or had for-profit college members, in addition to the representative of national accreditors that accredit for-profit colleges. By contrast, only two of the 16 negotiators represented students and consumers. We encourage the Department to consider the appropriate balance and diverse student and taxpayer interests at stake. For rulemaking on program integrity issues in particular, we encourage the Department to invite nominations of representatives of students, veterans, consumers, college access, legal aid, workforce preparation programs, and state attorneys general.

Urgent Need for Stronger Regulations to Protect Students and Taxpayers
Students, including veterans, and taxpayers urgently need protection from career education programs that consistently leave students with debts they cannot repay. As a broad coalition of nearly 50 organizations representing students, veterans, consumers and advocates for civil rights and college access recently wrote to President Obama, the need for a strong and effective gainful employment rule has never been clearer. Since the final gainful employment regulations were issued in June 2011, new information about for-profit college fraudulent conduct, sky high tuitions, and bad student outcomes reinforce the urgent need for a strong gainful employment rule. For instance:

- At least 32 state attorneys general are now jointly investigating the industry.

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While there are some responsible companies providing quality programs, the latest facts, including the report from the Senate Health, Education, Labor and Pensions Committee’s two-year investigation of the for-profit college industry issued last year, show that the problems are widespread, and not limited to a handful of bad actors. They warrant greater scrutiny.

Other government investigations started since June 2011 and continue today, including the Consumer Financial Protection Bureau’s investigations of Corinthian Colleges and ITT Educational Services, and the Securities and Exchange Commission’s investigations of ITT Educational Management Corporation.

Media coverage of and editorials on for-profit college practices, abuses, and investigations have proliferated since June 2011. More than 65 papers have editorialized about the need for greater scrutiny of the for-profit college industry. A sampling of the editorials and news coverage is attached as Appendix B.

New research and data continue to confirm that students who attended for-profit colleges face particular challenges in terms of both college costs and outcomes. The Education Trust found that most for-profit institutions require students with family income less than $30,000 to contribute more than 100 percent of their average household income toward college costs and offer a less than one-in-four chance at graduating. Faced with such high costs, students are much more likely to borrow and subsequently experience difficulty repaying their loans. Controlling for student characteristics, Deming, Goldin, and Katz (2011) found not only that for-profit college students have far greater student debt burdens and student loan default rates than comparable students from other schools, but that they end up with higher unemployment and lower earnings six years after enrolling. Similarly, an analysis released in 2012 using the National Longitudinal Survey of Youth demonstrated that students who obtained associate degrees from for-profit colleges later earned significantly lower compensation than comparable AA completers from other types of colleges.

Government reviews show the same trends. A 2011 Government Accountability Office report concluded that for-profit college students experienced higher borrowing rates, debt loads, and subsequent unemployment – and also found that they were less likely than students from public or nonprofit colleges to pass licensure exams in 9 out of the 10 program areas reviewed.

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These are just some of the recent reports that raise serious questions about for-profit college student outcomes—collectively, whether for-profit college students’ post-college employment prospects justify their debt loads—and they are precisely the questions the Department sought to answer with its focus on debt burdens and loan repayment rates for career education programs.

The program level data published by the Department last year demonstrate precisely why a strong gainful employment rule is so urgently needed. Many programs’ performance on the repayment rate and debt-to-income ratios was astonishingly poor:

- At more than 500 programs, less than 20 percent of students’ debt was being repaid.
- There were more than 1,500 programs where graduates’ debt-to-discretionary income ratios were 100% or higher.
- Unfortunately, most of the programs were missing data on one or more of the measures, so the full picture of program outcomes remains incomplete. However, of the programs with complete data, five percent—193 programs at 93 different for-profit colleges—failed all three tests.

As shocking as these data are, every single one of these programs, no matter how poorly their students fare, continues to be eligible for unlimited federal funding at students’ and taxpayers’ expense.

### Gainful Employment

The need for a strong gainful employment rule is even clearer now than it was in 2011, and it is critical that the Department move forward with defining a strong and enforceable gainful employment as soon as possible.

The July 2012 court ruling emphatically upheld the Department’s authority to define gainful employment, which the for-profit college industry had challenged. Further, the court underscored the need to do so, concluding, “The Department has set out to address a serious policy problem, regulating pursuant to a reasonable interpretation of its statutory authority…. Concerned about inadequate programs and unscrupulous institutions, the Department has gone looking for rats in ratholes — as the statute empowers it to do.”

While the final gainful employment regulation did not set high enough standards for career education programs receiving federal student aid, its overall approach remains sound: provide consumers with important information about career education programs at all types of colleges, and stop taxpayer funding to programs that routinely leave students with debts they cannot repay. Repayment rate and debt-to-income metrics provide a reasonable gauge of how a program’s former students—both completers and non-completers—fare after they leave the program. The

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repayment rate metric includes students who do not complete the program and measures the extent to which they are repaying their federal loans, while the debt-to-income metrics include only students who complete and measures the extent to which they consistently have excessive federal and private loan burdens.

Importantly, they also both have solid bases in the lending industry. As documented in Sandy Baum and Saul Schwartz’s 2006 paper commissioned by TICAS and the College Board, debt-to-income ratios arose from mortgage underwriting standards. It is also widely accepted in consumer finance that negative amortization loans, where loan principal does not decrease, are risky. In fact, the Office of the Comptroller of the Currency (OCC) in 2009 recommended a prohibition on negative amortization mortgages where borrowers “dig deeper into debt with each monthly payment,” and in fact these types of mortgages have been banned in California since 2010. The OCC makes clear that such loans “do not reduce the borrower’s outstanding liability or the bank’s credit exposure…” and “…benefit neither of the parties involved in the loan.” As a measure of students’ loan debt that is not in negative amortization, the repayment rate assesses the riskiness of outstanding student loans and the risk to students and taxpayers of making further investments.

**Importance of both repayment rate and debt-to-income measures.** Both of these measures are essential to an effective definition of gainful employment which eliminates funding for the worst programs and provides incentives for schools to focus on both reducing the number of students who do not complete and increasing the number who do complete without burdensome debt.

As a coalition of organizations representing students, consumers and college access organizations wrote in May 2010, the gainful employment metrics need to avoid creating loopholes for programs with both high student borrowing and low completion rates. A low completion rate is one of the ways programs can fail to prepare students for gainful employment. Students who borrow but do not complete are often left carrying substantial debt without the increased earning power that should come from a completed degree or certificate. Therefore it is important that the definition of gainful employment not create a loophole for schools to ignore the debt burdens of students unlikely to complete or to create obstacles to completion by students with high debts.

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15 May 14, 2013 letter from OCC to the Consumer Bankers Association (CBA), in response to comments on CBA comments on private loan modifications. See Appendix C.

16 Depending on a borrower’s income, family size, and amount owed, the loan principal of borrowers in Income-Based Repayment (IBR) may decrease or increase. However, IBR differs fundamentally from negative-amortization mortgages in that any debt remaining after 20 or 25 years of IBR payments is forgiven. IBR is a benefit for borrowers of federal student loans, which are a form of student financial aid.

The Senate HELP Committee investigation revealed the extent to which some companies are willing to ignore the debt burdens of students who do not complete because such students were not included in the final gainful employment rules’ debt-to-income measures. The Senate report cites a confidential presentation to ITT’s board of directors prepared in response to the draft gainful employment regulation that notes that “the overwhelming majority of our programs do NOT comply with the proposed ‘GE bright line’” but that ITT “could comply with the proposed rule by reducing tuition levels by an average of 11 percent.” [emphases in the original] The board presentation declared that a tuition reduction was the “least economically efficient scenario” because it would reduce debt levels for all students, not just graduates, while the proposed regulation only applied to the debt-to-income ratios of graduates. The Senate report concludes:

Essentially reducing tuition and thus debt for students who dropped out was deemed inefficient because they were, at that point, not captured in the regulation. The board presentation went on to state that the “most economically efficient” solution would be to provide selective financial awards to students likely to graduate. By focusing on graduating students, these awards “effects only revenue from program completers,” but would still “result in a reduction of the median loan debt balance of graduates in each program of study.”

Consistent with this presentation, ITT subsequently created “Opportunity Scholarships” that are given retroactively to students after they complete a given quarter. ITT reserves the right to “at any time in its sole discretion, terminate the [Opportunity Scholarships], which termination will be effective as of the start of the next quarter.” In this way, ITT reduces the debt loads of graduates, without “inefficiently” reducing debt for students who are not expected to graduate. This underscores the need for at least one of the gainful employment metrics to include non-completers, and the need for the regulations to prevent and anticipate gaming by companies that leaves students with debts they cannot repay.

**Addressing the court’s two concerns.** The court’s two concerns can easily be remedied in a way that reduces the burden on schools offering quality, affordable programs:

1. **Repayment rate threshold.** The court concluded that the Department did not provide sufficient rationale for setting the minimum program repayment rate threshold at 35 percent. Indeed, it is difficult to justify continued funding of programs where 65 percent of the debts of former students are not being paid down, year after year. There are numerous studies, regulations, and laws on which a more appropriate, higher repayment rate could be based. For instance:
   a. Congress has determined that colleges where 30 percent or more of borrowers default on their loans may lose access to aid. This suggests Congress

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19 Ibid.
20 ITT “Opportunity Scholarship” fact sheet, posted on company web site in April 2013. Attached as Appendix D.
presumes an institutional repayment rate of 70 percent, and could justify
sanctions for programs with repayment rates below 70 percent.

b. According to an analysis of borrower payment history from the Institute for
Higher Education Policy, 41 percent of borrowers become delinquent or
default within the first five years of repayment. That means that, not only
were they unable to repay the loans they took out, but that the cost of them has
likely escalated substantially due to the financial consequences of delinquency
and default. That is a very clear sign that the education gained had less value
than the debt incurred. This study provides a reasoned basis for limiting
federal aid eligibility to programs where fewer than 60 percent of students are
successfully repaying their loans.

c. As discussed earlier, negative amortization loans, where loan principal does
not decrease, are widely considered risky. The repayment rate in the final
gainful employment regulation measures the extent to which a program’s
former students are not reducing their loan principal, and the resulting risk to
students and taxpayers of continuing to subsidize the program. This provides
a reasoned basis for limiting funding to programs where loans are generally in
negative amortization: those with repayment rates below 50 percent.

d. A study (Appendix E) by TG, a non-profit student loan guaranty agency,
demonstrates that just half of federal student loan defaults occurring in the
first five years of repayment happen in the first three years – just as many
occur in the next two years. That means that colleges may be retaining access
to aid even when 60 percent of their borrowers default on their loans, and only
40 percent have avoided default. Given the repayment rate’s use of a longer
window of time than used for cohort default rates, career education programs
could be required to demonstrate that at least 40 percent of students’ loan debt
is being repaid.

2. **Debt-to-income calculation.** The court’s other objection (that the way the
Department was capturing data on students who do not receive federal aid violates
federal law), can be remedied simply by deeming a program to have passed both
debt-to-income metrics if a majority of the program’s graduates do not take out loans.
This would focus scrutiny on programs where debt loads may be problematic – since
debt-free graduates cannot have problematic debt loads - and would have the added
benefit of reducing the administrative burden on schools, including many community
colleges, offering programs where a majority of the students do not borrow. For
programs where most graduates do have debt, the measures would still exclude the
minority of graduates who did not borrow. This would mean that some graduates
(those who did no borrow) would be excluded in the program assessments, but that
program assessments would always be based on the majority of graduates.

The debt-to-income thresholds would not need to be and should not be weakened.
Indeed, there is a strong basis for strengthening them, as the Department
acknowledges that the thresholds are already higher than recommended by existing

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research. For instance, in a September 8, 2010 post for the *Chronicle of Higher Education*, Sandy Baum reiterated that the Baum-Schwartz paper referenced above supports using a debt-to-discretionary-income threshold of 20 percent or less. She and Michael McPherson write that the paper “concluded that manageable payment-to-income ratios increase with incomes, but that no former student should have to pay more than 20% of their discretionary income for all student loans from all sources.”

The Department’s use of a 30% limit for student loan debt relative to discretionary income goes well beyond this research, particularly as the Department’s calculation does not include an adjustment for family size. *Accordingly, we recommend the Department use a single 20 percent threshold for the debt-to-discretionary-income ratio, particularly if it continues to assume a family size of one for all borrowers.*

Similarly, Baum’s attempt to document the historical basis for the eight-percent rule of thumb for student loan debt found that it was initially intended to include all forms of non-mortgage debt, such as credit card payments and car loans. Even if eight percent were an appropriate student debt threshold for traditionally aged college students who may have little debt outside of student loans, it is decidedly less so for career education programs, whose students are more likely to be working adults with families and significant financial obligations. *To the extent that eight percent is an inappropriately high threshold, twelve percent is even more so.*

With the Court’s concerns addressed, the Department can turn its attention to the ways the rule must be modified to better ensure that it functions as intended. Since the rule was finalized in 2011, new information has become available, including program-level informational gainful employment data, experience with the required gainful employment program disclosures, and a better understanding of how some colleges may try to manipulate the debt measures. Such information demands that appropriate modifications to the regulation be considered. Specifically:

- **Provide incentives for poorly performing programs to improve.** Under the final regulation, programs did not lose eligibility for federal funding until they failed *all three metrics* in *three out of four years*. As a result, programs like the medical assistant certificate from Sanford-Brown College in Missouri would not face any consequences, despite having a repayment rate of 18 percent and a debt-to-discretionary income ratio over 100 percent. Le Cordon Bleu’s culinary arts associate degree in Portland and Westwood College’s animation bachelor’s degree in Illinois both have debt-to-income ratios above 20 percent and debt-to-discretionary income ratios above 100 percent, but – with repayment rates both just above 35 percent – neither would be at risk under the previous gainful employment rule.

Poorly performing programs such as these must be required to improve in order to keep receiving federal funding. To ensure that they do, programs that *fail two out of three measures* should face increasing consequences if they do not improve.

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For example, programs failing two out of three measures for two consecutive years could be required to disclose certain information to all prospective and current students, or face restrictions on the number of students they can enroll or federal aid they could receive. After a third year, disclosures or limitations could apply to the entire school, rather than just to specific programs, or enrollment or aid limits could be reduced. After a fourth year of failing two out of three measures, enrollment or aid to that program could be further reduced, or the program’s eligibility could be eliminated entirely. Taxpayers should not be expected to indefinitely fund programs that fail two out of three measures year after year.

- **Improve program disclosures.** While the court ruling invalidated much of the original gainful employment rule, the requirement for gainful employment programs to disclose information about cost, debt levels, and completion rates still remains and must be improved.

  - **Specify the form and location of gainful employment program disclosures so students can find and understand them.** The format and location of the gainful employment consumer disclosures must be specified. The current disclosures on college web sites are frequently very difficult to find and understand. See Appendix F for examples of disclosures that are very difficult to find and/or understand. The Department should specify the location and format to make them easier to find, use and compare.

  - **Job placement rates.** The job placement rates currently disclosed by career education programs are highly problematic for multiple reasons. First, there is no standard definition of a job placement so, for instance, students who were employed for just a day or in a position that did not require the degree, may be counted as a job placement. Second, national accreditors each have different methodologies for defining a job placement, so rates using one methodology cannot be compared with rates using another. Third, regional accreditors do not require job placement rates, so regionally accredited schools are not required to report any job placement rates (e.g., University of Phoenix, Kaplan University, Bridgepoint’s Ashford University). Finally, multiple for-profit colleges have falsified and inflated their job placement rates. Regulations finalized in 2010 (34 CFR 668.6(b)(1)(iv)) require schools that are required by their accrediting agencies and/or State to calculate a job placement rate for career education programs to disclose these placement rates and identify the accrediting agency and/or State agency under whose requirements the rate was calculated.

In light of the problems with current job placement rates, the 2010 regulations required the Department to convene a technical panel to determine an appropriate and standardized definition. The Department convened the panel, but it concluded in 2011 that it was unable to develop a single job placement rate.

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methodology due to data limitations. In light of this outcome, the Department needs to revisit this issue; the current job placement rate disclosures were intended to be a temporary solution until the solution recommended by the technical panel could be implemented. This issue is too important to simply kick the can down the road. Recent research underscores the importance of job placement rates to consumers, who deems graduates’ ability to acquire jobs one of the best indicators of college quality.

If the Department cannot come up with a uniform standard for job placement rates that ensures both accuracy and comparability, it must at least take steps to ensure the rates are not misleading. Along these lines, the Department could develop minimum standards for all job placement rates, including, for example, how long a person must be employed to be counted as placed. The Department could also require schools to disclose the definition and methodology used to calculate rates and that they may not be comparable to rates using different methodologies, and have schools that are required by their accreditor to report job placement rates to have those placement rates independently audited (similar to what Texas recently required ATI Career Training Center to do).

- **Fix the on-time completion rate disclosures.** Current regulations require all career education programs to disclose their “on-time completion” rate. However, as TICAS and the student and consumer representatives wrote to Secretary Duncan in 2011, as currently calculated, rather than provide helpful information, the on-time completion rates disclosed can provide misleading information to students and the public. The calculation needs to be modified to show the share of all students who start the program who complete on-time, rather than reflecting the share of student completions that were “on-time.” The rate also needs to clearly specify what is considered “on-time” for that program. As illustrated in examples in Appendix F, many of the current “on-time” completion rate disclosures do not indicate what is considered on-time. Some schools say they consider 4.5 years to be “on-time” completion for a certificate program.

- **Ensure schools cannot evade accountability under the rule.** The regulations need to prevent schools from evading accountability by doing things such as closing poorly

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28 As illustrated in Appendix F, Strayer University defines “on-time completion” of certificate and diploma programs to be 4.5 years.
performing programs and reopening a similar or identical program under a different name; keeping programs small; or making payments on a student’s loan to artificially inflate the program’s repayment rate.

- **Closing and reopening programs.** The Department has rightly been concerned that some institutions might attempt to circumvent the gainful employment standards simply by creating new programs, which take time to assess. To prevent the evasion of the rule by creating new programs, TICAS and more than 20 organizations representing students, consumers and civil rights organizations urge the Department to require colleges with one or more failing programs to apply for approval of any new programs. This will more effectively prevent gaming and provide an additional incentive for schools to meet the modest debt standards while reducing the administrative burden on schools with a strong record of preparing students for gainful employment.

- **Small programs.** Under the final regulation, programs with fewer than 30 students were automatically deemed to have passed the metrics. This number should be lowered so schools cannot easily evade accountability by keeping programs small. A minimum of 10 students is more than sufficient to protect student privacy. For example, the National Center for Education Statistics provides data on CollegeNavigator.gov covering as few as three students.

- **Making payments on loans to manipulate repayment rate.** At the Department’s annual Federal Student Aid conference in 2011, a for-profit college representative asked if schools may make payments on a student’s loan in order to artificially keep a program’s repayment rate below the relevant threshold. If the regulations do not already prohibit such payments, they should immediately be amended to prohibit them.

- **Provide relief when programs are found to not prepare students for gainful employment.** Students enrolled in programs that lose Title IV eligibility and are unable or choose not to complete their program in the time remaining, and those who are unable or choose not to transfer to an alternative program within the same institution, should not be accountable for federal student loan debts incurred to attend that program. Federal student loan debts incurred to attend programs subsequently deemed ineligible under this regulation should be discharged. Also, the determination of a program’s subsequent ineligibility should be an allowable defense to collection for students who borrowed for a program and later were unable to afford payments on those loans. The Department has the authority to compromise loans, and we further urge the Department to seek reimbursement from institutions for discharges granted to borrowers and for federal Pell Grant funds awarded to students.

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30 See, e.g., 20 U.S.C. § 1082(a) (FFEL); 31 U.S.C. § 3711 (General authority to compromise government debts); 34 C.F.R. § 30.70.

31 For example, for discharges granted under the closed school or false certification authority, the regulations provide that after discharge, the borrower is required to cooperate with the Secretary to recover for amounts discharged. 34 C.F.R. § 682.402(e)(4).
• **Reconsider changes that weakened the final gainful employment regulation.** We also urge the Department to consider whether new information suggests that changes made to the final regulation – virtually all of which weakened the standards and disclosures – deserve reconsideration. The ways in which the final rule was weakened are numerous, including: requiring only private, emailed warnings be provided to students enrolled in weak programs; the exclusion of Perkins loans from the debt ratios; limiting the debt included in the ratios to the amount of tuition and fees assessed; and excluding high cumulative debt amounts when graduates’ Social Security Administration earnings cannot be matched. *At the absolute minimum,* the following changes must be revisited in light of experience since the final rule was issued in June 2011:

- **Calculating debt-to-income ratios using both mean and median earnings, and using the one that reflects more favorably on the program.** As became clear with the informational data release, calculating ratios using both mean and median and using different measures for each program and ratio renders the data useless for comparison purposes. Neither consumers, researchers, schools nor policymakers can compare the resulting ratios because some are means and some are medians, and there is no way to tell which is which. This led to confusion and accusations that the Department had erred in calculating the ratios. We encourage the Department to use either mean or median earnings in all cases, and recommend using the mean as under the NPRM.

- **Granting programs an allowance for negative amortization loans in repayment rates.** Unlike the NPRM, the final regulation allowed some borrowers repaying under Income Based Repayment (IBR) and the new Pay As You Earn plan to be counted as paying down their debt when their balance was actually increasing because their payments were too small to cover accrued interest. This is inappropriate. IBR is a safeguard for borrowers, not a shelter for schools. As the NPRM had aptly noted, mortgage insurance is intended to protect homeowners, not to enable builders to build dangerous, substandard homes. By providing for negative amortization loans to be counted as being paid down, the final rule inappropriately turns IBR and Pay As You Earn into potential shelters for schools. A program that enrolled all its former students in income-contingent repayment programs would be *guaranteed* federal funding under the final gainful employment regulation, even if it consistently left students with debts they could not repay. Further, as with the debt ratios, granting each program an unspecified allowance for negative amortization loans renders the repayment rates far less comparable.

- **Including debt from related institutions.** All debt incurred at a school under the same control structure must be included in any measure of gainful employment that considers debt. Unlike the NPRM, the final rule allowed for this but did not require it. Including this debt is critical as, without it, schools controlled by the same company could simply move students from one school or program to another. The recent evidence is plentiful (see section below on preventing cohort default rate and 90/10 rule manipulation) that colleges make operational changes such as combining OPEIDs to remain in compliance with CDR and 90/10 rules, and the risk of such gaming to create the appearance of low debt burdens is very high.
Moving forward with a strong gainful employment rule will help to protect students and taxpayers even before the rule goes into effect. As weakened as it was, the threat of real sanctions under the final gainful employment rule helped prompt some of the biggest for-profit colleges to eliminate some of their worst programs, freeze their tuition costs, and make some reforms, like giving students trial periods before banking their tuition checks. After last year’s court ruling, industry analysts made clear that if the Department doesn’t promptly initiate rulemaking, the companies will reverse these and other reforms they implemented in response to the rule. For example, immediately after the court ruling last year, an analyst wrote “We would not expect any of the public companies to change their strategic thinking regarding GE preparation and reporting as a result of this decision, pending the outcome of an appeal.”\textsuperscript{32} [emphasis added] Another analyst wrote “we don’t think the decision is definitive enough to cause these companies to roll-back ongoing efforts to phase out or modify programs that do not comply with the most recent version of the GE regulation.”\textsuperscript{33} In other words, failure to promptly move forward with regulating gainful employment will not only miss an opportunity to move career education forward; it will move it backward.

**Prevent cohort default rate (CDR) and 90/10 rule manipulation**

We join eight U.S. Senators\textsuperscript{34} in urging the Department to modify its regulations and take other actions to prevent companies from evading the law at the expense of students and taxpayers.\textsuperscript{34} The final report of the Senate Health, Education, Labor and Pension Committee’s two-year investigation of the for-profit college industry provides abundant evidence that some for-profit education companies are using multiple strategies to evade the spirit, if not also the letter, of current program integrity laws. Current rules must be strengthened to prohibit colleges from evading the law.

**CDR evasion via abuse of forbearance and deferments**

Some for-profit college corporations are abusing forbearance and deferment, using them as tools to manipulate the school’s CDR regardless of the student’s particular situation or whether it is in the student’s best financial interest. These corporations are using forbearance and deferment to delay defaults until after the period when schools are held accountable (currently during the first two years of repayment for Title IV funds and during the first three years for state Cal Grant funding and for Title IV funds beginning in 2014).

While avoiding default is always in students’ best interest, increasing their loan balance and leaving them to default on a higher balance is not. Loans always accrue interest while in forbearance, and unsubsidized loans accrue interest during both forbearances and deferments. The additional interest accrued is added to the principal loan balance at the end of the forbearance or deferment, with the result that interest then begins accruing on an even larger balance. In most cases, students struggling to make loan payments are better served with counseling on how to repay their loans and the availability of Income-Based Repayment (IBR).

\textsuperscript{33} Credit Suisse Education Services Catalyst Report. July 2, 2012. *Judge Overturns Much Of GE; Saga Continues.*
Documents from four large companies demonstrate that, on average, over 75% of the delinquent borrowers “cured” (i.e., prevented from defaulting) were put in forbearance or deferment, while only 24% had made payments on their loans. For instance:

- In 2010, 78% of the ITT borrowers were “cured” by its “default management” contractor by being placed in deferment or forbearance, two-thirds of whom were placed in forbearance.35

- In March 2012, Corinthian announced that it had reduced its three-year CDR from 36.1% to 28.8%, a 7.3 percentage point decrease in just one year.36 Corinthian says it expects the two-year CDRs that the Department will release next month to show a massive 14.8 percentage point reduction in just one year—from 21.5% to 6.7% between the 2009 and 2010 cohorts.37 As Corinthian executives told investors in May 2011, “Forbearance, as you well know, is a pretty easy – it’s just a question, you have to agree to it and you’re on your way.”38 However, the executives made clear that the number of students repaying their loans had changed little: “Our repayment rate really hasn’t moved a whole heck of a lot from where it was prior to this effort.”

The Senate report concludes that many of the tactics used by for-profit college corporations “appear to cross the line from default management to default manipulation.” It notes that these efforts to prevent student default often “abruptly halt” after the period when schools are held accountable for defaults.39

In fact, in his February 27, 2013 response to the Senators’ letter, Secretary Duncan disclosed that the Department’s own investigation of forbearance abuse found that “some institutions are aggressively pursuing their former students to compel them to request forbearance from their loan servicer.” Further, many borrowers “expressed the view that they were pressured or “forced” to apply for forbearance and were not made aware of other options, such as deferment or the income-based repayment plan.” Most shockingly, one borrower who was current in her payments was offered a $25 gift card to complete the forbearance process.

Stronger rules could help avoid this type of manipulation, which puts students at risk of both higher loan balances and eventual default. In defining the authority to grant forbearances, the Higher Education Act (428(c)(3)(B)) specifies that contracts “may, to the extent provided in regulations of the Secretary, contain provisions that permit such forbearance for the benefit of the student borrower as may be agreed upon by the parties to an insured loan and approved by the

insurer” (emphasis added). The Department could, for instance, specify that certain types of forbearance patterns are rarely to borrowers’ benefit and prohibit back-to-back forbearances. Alternatively, the Department could require documentation for why IBR is not preferable to forbearance before an extended forbearance is granted. Each of these rule modifications recognizes the importance of forbearance as short-term relief but prioritizes longer term solutions – such as affordable repayment plans – for the longer term. They are also consistent with the guidance recently provided by the Office of the Comptroller Currency included in Appendix C, which advises that forbearances should be temporary and used when a borrower “can demonstrate a reasonable prospect of increased income in the foreseeable future.”

Additionally, current CDR rules consider any borrower a school has paid to avoid default to be in default. Specifically, CFR section 668.183(c)(1)(iii), which defines which borrowers are considered defaulters for the purpose of CDR calculations, includes those for whom “before the end of the following fiscal year, you or your owner, agent, contractor, or any other affiliated entity or individual make a payment to prevent a borrower’s default on a loan that is used to include the borrower in that cohort” (emphasis added). The regulation does not specify that the referenced payment must be made on the loan in question. Thus the provision of gift cards or other means that provide monetary value in exchange for an action by the borrower that could affect CDR should be considered a payment on the borrower's loan. If such actions are not already prohibited under current rules, the Department should strengthen the rule so that they are.

Outside of the rulemaking process, there are other steps that the Department can and should take immediately to prevent the abuse of forbearance and deferment to evade CDR thresholds. First, if the Department has not already done so, it should immediately analyze the extent to which companies are using forbearance and deferment, particularly serial forbearance and deferments, which are an indication that borrowers are not receiving proper counseling about IBR and other repayment options. Second, the Department should examine whether the number of defaults at an OPEID spikes after the CDR window closes. For instance, when four additional months were examined for the 2008 cohort, the number of OPEIDs with three-year CDRs over 40% more than doubled. The use of serial forbearances and spikes in defaults after the CDR window closes should be used as triggers to prompt an immediate investigation into possible CDR evasion, a program review, and/or an audit. During the student loan negotiated rulemaking process that ended in March 2012, the Department publicly committed to scrutinize serial forbearances, including in program reviews and audits, but provided no timetable for doing so. Finally, the Department should issue additional guidance to schools on what constitutes proper default management and what constitutes CDR evasion, and on the additional steps the Department is taking to prevent both loan defaults and CDR evasion.

90/10 manipulation through disbursements
Other internal company documents obtained by the Senate committee indicate that some companies are delaying giving students their federal aid for the sole purpose of moving these funds into the next fiscal year in order to keep the school below the 90 percent federal funding limit (known as the 90/10 Rule). These delays occur without regard to what students want or need. As documented in the Senate report, Career Education Corporation senior executives instructed employees to delay students’ disbursements, for weeks after students requested their refunds, for the sole purpose of manipulating campuses’ 90/10 rates, while providing
disingenuous explanations to students inquiring about the delays. Career Education Corporation has admitted doing so as recently as August 2012, stating in a filing that, “The Company has implemented several initiatives in order to assist certain of our institutions in complying with the 90-10 Rule, including… delaying until the first quarter of 2013 the disbursement and subsequent receipt of up to $25.0 million of Title IV funds.”

In general, colleges and universities are required to disburse Title IV funds to their students once per payment period. More frequent disbursements are permitted if the institution determines that more frequent disbursements “best meets the student’s needs.” (See, for example, Pell Grants at 690.76.) Subregulatory guidance provided in the Federal Student Aid Handbook goes further and specifies that aid “must be provided to students in a timely manner.”

Current 90/10 regulations generally require institutions to presume that any Title IV funds disbursed to students will be used to pay institutional charges, including tuition and fees. The oversight of institutional compliance with the 90/10 rule would be improved by including a similar presumption regarding disbursements of Title IV aid. That is, the institution would be required to presume that any Title IV program funds it disbursed or could have disbursed to its students during a payment period would be considered as Title IV revenue for the 90/10 reporting period that includes the start of that payment period.

**CDR and 90/10 manipulation by combining campuses**

Still other companies are combining campuses for reporting purposes so their new “combined campuses” comply with the 90/10 Rule and with the cohort default rate (CDR) thresholds for receiving billions of dollars of federal student aid.

The Department’s CDR Guide defines CDR evasion as “an attempt to avoid cohort default rate sanctions by changing a school’s name, location, corporate structure, OPEID, or other status.” As the Senate report abundantly documents and as explained below, this is exactly what several large for-profit colleges appear to be doing, including Corinthian Colleges (Corinthian), Career Education Corporation (CECO), and ITT.

CDRs and 90/10 ratios are calculated based on assigned six-digit Office of Postsecondary Education ID numbers (OPEID), rather than by campus or corporate owner. Many for-profit companies have multiple six-digit OPEIDs, each of which may consist of a main campus and multiple branch campuses. Schools with multiple six-digit OPEIDs can and do shift campuses to different OPEIDs and classify them as branches regardless of their geographic proximity, even when they are located in several different states.

For example, ITT recently merged 29 separate six-digit OPEID numbers into just 3 OPEIDs. According to the CEO of ITT:

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42 Branch campuses that share a single six-digit OPEID often have unique eight-digit OPEIDs that are based on the common six-digit one. These campuses report a CDR together (under the six-digit OPEID) but report other data separately, such as graduation rates.
the reasons for doing that certainly relate to our compliance efforts and risk mitigation associated with all of the different regulatory controls … So, this impacts your CDR, your 90/10 and all those other metrics that exists, including any new metrics that may come our way as a result of regulatory change.\textsuperscript{43}

In February 2012, CECO told investors that it had submitted an application to the Department seeking to consolidate up to 19 of its 26 OPEIDs into 1 OPEID. If it had been approved, CECO would have operated just 8 OPEIDs. CECO had six OPEIDs with 90/10 rates above 90% in FY2011, and all six were among the 19 the corporation sought to consolidate.\textsuperscript{44} Four of these six OPEIDS also had three-year FY08 CDRs over 24%. Its annual report stated “another result of this consolidation will be the calculation of a single student loan cohort default rate and a single rate under the 90-10 Rule for all of the campuses within the consolidated institution.”\textsuperscript{45} In other words, consolidating campuses with high CDRs and 90/10 rates has the potential to mask serious, known quality problems at campuses that may otherwise have exceeded thresholds for federal funding.

Such consolidations of OPEIDs should clearly be construed as institutional mergers that should be viewed as changes of ownership that result in a change in control. This is an existing concept that applies to situations where changes in the management of institutions call for additional scrutiny of the institutions. For instance, the Department requires institutional accrediting agencies, as part of their required operating policies and procedures, to conduct an on-site review—within six months—of any institution that has undergone a change in ownership that results in a change in control. The above examples of OPEID consolidation make clear that such consolidations also require additional scrutiny, and that the Department should consider how best to use its authority to prevent the evasion of federal law in this way.

In addition to added accreditor scrutiny, for example, to prevent the evasion of accountability measures such as CDR thresholds and the 90/10 Rule, the Department could either not allow changes in OPEIDs in cases where institutional compliance is in question or require continued compliance under former OPEIDs for at least three years after any change in OPEID and sanction any that would have exceeded the CDR thresholds but for the change in OPEID.\textsuperscript{46} Such


\textsuperscript{44} The six CECO OPEIDS with 90/10 rates over 90% are Sanford Brown in Atlanta, GA; Boston, MA; Farmington, CT; Fenton, MO; and McLean, VA and Missouri College. From CECO’s February 27, 2012 10-K form: “The six OPEIDs with estimated 90-10 rates above 90% for fiscal year 2011 are all among the institutions included in the pending application for consolidation. These six institutions will cease to separately exist if and when ED approves the consolidation. We would not expect ED to issue them separate 90-10 rates for fiscal year 2012 since they would not exist as separate institutions at the end of fiscal year 2012, but we cannot be certain of ED’s procedures in this situation. If ED approves the consolidation, it is uncertain whether the fiscal year 2011 90-10 rates for this smaller group of institutions will affect how ED will calculate or apply the fiscal year 2012 90-10 rate for the larger consolidated institution.” http://services.corporate-ir.net/SEC.Enhanced/SecCapsule.aspx?c=87390&fid=8032878.


\textsuperscript{46} The Higher Education Act (20 USC § 1085 (m)(3)) specifically authorizes the Secretary to act prevent CDR evasions, stating “The Secretary shall prescribe regulations designed to prevent an institution from evading the
monitoring would be well in line with other steps the Department takes to prevent gaming of accountability measures: the Department’s Federal Student Aid Handbook for 2012-13 explicitly provides for the continued monitoring and enforcement of 90/10 rates when a school converts from for-profit to non-profit.47

Address Collection Abuses and Limit Debt Collection Fees
To increase fairness and lower costs, we urge the Department to consider eliminating the use of private collection agencies, as the Internal Revenue Service has done. In the federal loan programs, private collection agencies are given authority to act on behalf of the loan holder in everything from rehabilitation to information about discharges to loan compromises. Yet dispute resolution is not their primary mission, they are not adequately trained to understand and administer the complex borrower rights available under the Higher Education Act, and there is insufficient oversight of their activities. As a result, consumers are deprived of important options to which they are legally entitled. Even worse, some collectors misrepresent these rights or steer consumers into options more profitable for the collector.

In the meantime, there are ways to improve the loan collection system so that private collection agencies follow the law and better serve borrowers. The regulatory issues we urge you to consider include: limiting collection charges to those that are bona fide, reasonable and actually incurred; ensuring that collection letters include information about exemptions and other rights; and prohibiting collection activities while the borrower is in rehabilitation.

State Authorization
We strongly support the Department’s view that State approval to offer postsecondary educational programs is a “substantive requirement.” Existing law makes clear that institutional eligibility for federal financial aid is based on three separate requirements: accreditation, state authorization, and compliance with federal requirements for administrative capability and financial responsibility. Approval from accrediting agencies, states and the federal government constitutes the “triad” of eligibility for federal financial aid, and allowing one of these three entities to shirk its responsibilities results in diminished oversight and protections for students and taxpayers.

However, some states have been deferring responsibilities to other entities, typically accrediting agencies, and many states do not require online schools to obtain state authorization, leaving their residents and taxpayers vulnerable to fraudulent online programs. The extent to which states may rely on accrediting agencies or authorization by another state should be clear and limited. States should be allowed to rely on another state’s determination only if the school has no physical presence in that state and the other state’s laws, authority and oversight are at least as protective of students and taxpayers as the first state’s.

application to that institution of a default rate determination under this subsection through the use of such measures as branching, consolidation, change of ownership or control, or any similar device.”

Because public colleges are more heavily regulated and they have not been the source of widespread complaints about fraud and abuse, public colleges may not need to be subject to the same state authorization requirements as other types of colleges. Requiring states to reexamine their state authorization for public colleges might use precious resources that could better be used ensuring adequate oversight where it is currently most lacking and sorely needed.

Additionally, or alternatively, the Department could consider exempting any type of institution of higher education that spends less than a specified percent of its revenues (e.g., 10 percent) on advertising, marketing and enrollment from needing authorization from states in which they have no physical presence. Under this approach, only colleges already investing heavily in recruiting and marketing would be required by federal regulation to seek state authorization from states in which they are offering online programs but do not have a physical presence. “Advertising, marketing and recruitment” should be defined as in the Protecting Financial Aid for Students and Taxpayers Act of 2013 (S. 528 and H.R. 340).

**Increasing the Efficacy of Participation Rate Index (PRI) Appeals**

Our prior comments on the need for the Department to accept PRI appeals in any year has taken on added urgency. With the release of colleges’ first official three-year rates last fall, which are always higher than two-year rates because they measure a longer period of time, more community colleges have--or fear--CDRs that fall near or above the thresholds that could trigger sanctions that lead to the school’s loss of aid eligibility.

The good news is that many of these schools have such low borrowing rates that the Higher Education Act (HEA) affords them a special protection from sanctions, called the Participation Rate Index (PRI) appeal. But the bad news is twofold. First, too few colleges that could benefit from the appeal know about it or understand how it applies to them. The Department needs to promptly assure community colleges around the nation with low borrowing rates that they are not at risk of sanctions. There are many actions the Department could take without additional regulations to ensure colleges understand the PRI appeal and how it applies to them. As just one example, see the PRI worksheet created by TICAS to help colleges calculate their PRI and understand its applicability to their college at http://projectonstudentdebt.org/files/pub/TICAS_PRI_Worksheet_2012.xlsx.

Second, the Department’s implementation of the PRI appeal process is hugely problematic, as it does not provide colleges with the assurance that they are not at risk when it is most needed. Colleges may lose eligibility for both federal grants and loans when they have three consecutive years of default rates at or above 30 percent, but they can appeal those sanctions if their borrowing rate for any one of those three years is sufficiently low. The problem is that the Department makes colleges wait until the third high-CDR year to let them appeal, without assuring colleges in years one or two that they are not at risk of sanction and thus denying them the chance to make an educated decision about continuing to offer student loans.

Without such knowledge or assurance, colleges are making decisions to stop offering loans. Nationally, nearly 1 in 10 community college students does not have access to federal student
loans. California stands out as the state with the greatest number of community college students – over 200,000 and growing – without access, but is by no means the only state. If we are serious about helping community college students complete their programs, community colleges need to participate in the federal loan program. For students who can’t otherwise afford to attend or finish school, federal student loans are the safest way to borrow.

The Department’s current regulation governing PRI appeals is based directly on the HEA, which explicitly provides an opportunity for relief when an institution is facing an immediate CDR sanction. However, there is nothing in the statute that prevents the Department from accepting appeals before the institution is facing an immediate sanction. In other words, the Department could choose to allow an institution to appeal its CDR based on its PRI at any time. Institutions would simply be appealing the applicability of its CDR towards a sanction, rather than appealing a sanction based on its CDR. If the Department thinks of its current rule as implementing a statutory “appeal” policy, then there is no reason it could not think of this proposal as a “petition” process.

Allowing annual PRI petitions or appeals would provide an institution with relatively few borrowers—particularly community colleges, at which borrowing is less common—with an ongoing, yearly assurance that its Title IV program participation is secure. It is imperative that the Department do so, so the college understands immediately that it is not subject to any looming program termination and refrains from making rash decisions that serve to deny students access to much needed financial aid.

Thank you for the opportunity to provide input on where regulations need to be improved. If you have any questions about our comments, please feel free to contact us by phone at (510) 318-7900, or by email at pabernathy@ticas.org or dcochrane@ticas.org.

Sincerely,

Pauline Abernathy     Debbie Cochrane
Vice President      Research Director
Appendices

Appendix A.  HigherOne web page for Alert! service.

Appendix B.  Selected News Coverage and Editorials Since the Gainful Employment Rule Was Issued in June 2011

Appendix C.  Office of the Comptroller of the Currency May 14, 2013 letter to the Consumer Bankers Association

Appendix D.  April 2013 ITT document on its “Opportunity Scholarships”


Appendix F.  Examples of Misleading and/or Noncompliant “On-Time Completion Rate” Gainful Employment Program Disclosures
Appendix A

HigherOne web page for Alert! service
OneDisburse Refund Management with Alert!

Higher One is taking a proactive stance in the fight against Financial Aid fraud! We’re excited to announce Alert! to help you get in front of the problem. As an optional feature within the OneDisburse Refund Management funds disbursement service, this model identifies potential cases of fraud quickly and with greater accuracy.

The Financial Aid Fraud Challenge:

More and more institutions are victims of fraud by “students” who habitually enroll in classes, take aid and then drop out of institutions once financial aid funds are disbursed. This fraud involves both federally granted, specifically Pell Grants, and borrowed funds in the form of student loans.

In the Department of Education Dear Colleague Letter published in October, 2011, institutions were issued recommendations on how to combat this problem including implementing automated protocols that monitor student data.

The Alert! Solution:

- Leverages data by comparing it against other institutions’ data
- Proactively identifies suspect enrollments and applications through data analytics
- Reports suspect applicants and/or existing enrollments that could pose a fraud risk
- Is FERPA compliant
- Recognizes patterns in students sharing similar directory details
- Identifies students who have habitually taken aid from other schools and then dropped out

How it Works – A Two Step Process:

1. We audit your existing student population to detect students that may warrant further review based on suspicious overlap in their data. We provide you with a simple report identifying suspect enrollments for your audit team to investigate.

2. You provide us with the information of your past students that received financial aid, but then dropped out once aid was disbursed. In exchange, we let you pre-screen new students against the same database to see if other institutions have already reported your new student as someone that took aid and dropped out of their program.

If you are interested in learning more about OneDisburse Refund Management with Alert! or how your institution can get 1,000 student records reviewed for free, please click the button below:
Appendix B

Selected News Coverage and Editorials Since the Gainful Employment Rule Was Issued in June 2011
Selected News Coverage and Editorials on the For-Profit College Industry
Since the Gainful Employment Rule Was Issued in June 2011
as of May 16, 2013

EXAMPLES OF NEWS COVERAGE:

2011

U.S. Department of Justice and Four States File $11B Lawsuit Against Education Management Corp.
New York Times, August 8, 2011
For-Profit College Group Sued as U.S. Lays Out Wide Fraud

Career Education Corporation Admits Widespread Inflation of Job Placement Rates
California Watch, August 10, 2011
For-profit education company inflated job placement rates

Two-Year Default Rates Jump from 11.6% to 15% at For-Profit Colleges
New York Times, September 12, 2011
Student Loan Default Rates Rise Sharply in Past Year

8 of the 10 schools receiving the most Post-9/11 GI Bill funds are for-profit institutions with
dropout rates as high as 69% for those working on Associate and Bachelor degrees
Army Times, September 22, 2011
Senator: High veteran dropout rate disturbing

GAO Report: 7 out of 12 For-Profit Schools Violate School Policies on Cheating, Grading, Counseling
Bloomberg/BusinessWeek, November 29, 2011
For-Profit Colleges Violated Rules on Cheating, GAO Says

2012

After 6 Years of Reports on For-Profit School Abuses, Texas Workforce Commission Takes Action
WFAA Dallas/Fort Worth, January 3, 2012
News 8 reports spur new rules for Texas career schools

For-Profit Colleges Under Attack for Allegedly Preying on Military Veterans
Chicago Tribune, January 22, 2012
For-profit colleges under attack for treatment of veterans
Accreditor Seeks More Accurate Job Placement Data from Career Education Corporation
California Watch, January 27, 2012
Accreditor seeks more accurate job placement data on for-profits

Kaplan Suspends Dental Program After Allegations of Misleading About Credentials
Chronicle of Higher Education, February 1, 2012
Kaplan Suspends a Dental-Assistant Program in North Carolina and Reimburses Students

Eight Senators Sponsor Legislation to Close 90/10 Loophole
New York Times, February 16, 2012
Bill Addresses Loop hole in Financing of Veterans’ Education

For-Profit Colleges Get Half of Military Education Benefits
Bloomberg/Businessweek, February 29, 2012
For-Profit Colleges Get Half of Military Education Benefits

American Career College Misreports Job Placement Rates; Certification Revoked
Fox 34 Lubbock, March 1, 2012
TWC revokes certification of two ACC campuses

Senators Want 'GI Bill' Trademarked to Curb Abusive Marketing to Veterans
Senators Want 'GI Bill' Trademarked to Curb Abusive Marketing to Veterans
http://chronicle.com/article/Senators-Want-GI-Bill/131062/

Attorneys General Investigate Institutional Lending at For-Profit Colleges
Attorneys General Take Aim at For-Profit Colleges' Institutional Loan Programs

For-Profit Colleges Raise Concerns by Calling Themselves 'Military Friendly'
Associated Press, March 30, 2012
For-Profit Colleges Raise Concerns By Calling Themselves 'Military Friendly'
http://www.huffingtonpost.com/2012/03/30/for-profit-colleges-military-friendly_n_1392102.html

Student Vets Group Shuts Down Sham Chapters at For-Profit Colleges
Stars and Stripes, April 5, 2012
Student vets group shuts down sham chapters at for-profit colleges
President Obama Signs Executive Order Targeting Colleges Preying on Veterans’ GI Bill Benefits
Huffington Post, April 26, 2012
Obama Targets Colleges Preying On Veterans' GI Bill Benefits

Consumer Financial Protection Bureau Investigating Corinthian Colleges
Inside Higher Ed, May 10, 2012
CFPB’s First For-Profit Salvo

Consumer Financial Protection Bureau Investigating ITT
Inside Higher Ed, May 23, 2012
Investigation of For-Profits Expands to ITT
http://www.insidehighered.com/quicktakes/2012/05/23/investigation-profits-expands-itt

21 Attorneys General Call for Changes to 90/10 Rule
Attorneys General Urge Congress to Close Military ‘Loophole’ at For-Profit Colleges
http://chronicle.com/article/Attorneys-General-Urage/132030/

5% of Programs, All at For-Profit Colleges, Fail All Three Gainful Employment Requirements
Salon, June 26, 2012
For-profit colleges fail Obama’s test
http://www.salon.com/2012/06/26/for_profit_colleges_fail_obamas_test singleton/

Marketing Firm Behind GIBill.com Settles with State Attorneys General
Stars and Stripes, June 27, 2012
GIBill.com shut down in settlement over defrauding veterans

California Eliminates Almost All Cal Grants Going to For-Profit Colleges
Inside Higher Ed, June 29, 2012
Private Sector, Public Money

WASC Rejects Ashford University’s Accreditation Application
Inside Higher Ed, July 10, 2012
Rise of the Accreditor?

Senator Harkin Releases HELP Committee Report on 2-Year Investigation of For-Profit Colleges
Senate Committee Report on For-Profit Colleges Condemns Costs and Practices

3-Year Cohort Default Rate at For-Profit Colleges Rises Again to Nearly 23%
Default Rate on Federal Student Loans Rises Again
http://chronicle.com/article/Default-Rate-on-Federal/134786/
VA Trademarks Term 'GI Bill' to Shield Vets from Deception
McClatchy News Service, December 4, 2012
VA trademarks term ‘GI Bill’ to shield vets from deception
http://www.mcclatchydc.com/2012/12/04/176340/va-trademarks-term-gi-bill-to.html#.UZVzyIKG5Ko

Eight Senators Call for Probe of Default Rate Manipulation
News Release, December 13, 2012
http://www.lautenberg.senate.gov/newsroom/record.cfm?id=338110

2013

Milwaukee Proposal Would Require Colleges Seeking City Financial Assistance to Comply with U.S. Department of Education Program Integrity Regulations
Milwaukee Journal Sentinel, January 30, 2013
Proposal would limit city money to for-profit colleges

Minnesota Attorney General Investigates For-Profit Colleges' Recruitment of Vets with GI Benefits
StarTribune, February 17, 2013
Minn. investigates for-profit colleges' recruitment of vets with GI benefits

SEC investigation of ITT's Private Student Lending Programs
Reuters, February 25, 2013
ITT says being investigated by SEC over student loan programs
http://www.reuters.com/article/2013/02/25/us-itteducationalservices-sec-idUSBRE91000C20130225

University of Phoenix Accreditation at Risk Over “Insufficient Autonomy”
Huffington Post, February 25, 2013
University of Phoenix Accreditation Hits Snag As Panel Recommends Probation
http://www.huffingtonpost.com/2013/02/25/university-of-phoenix-accreditation_n_2762168.html

32 Attorneys General in Working Group Examining Abuses in the For-Profit College Industry
Kentucky Attorney General Conway News Release, March 15, 2013
Attorney General Conway Announces Support of Federal Bill to Curb For-Profit College Recruiting Abuses
http://kentucky.gov/Pages/Activity-Stream.aspx?viewMode=ViewDetailInNewPage&eventID=%7B6121DC3A-A61A-4F5E-88A9-1276B64F021C%7D&activityType=PressRelease

14 Attorneys General Support Hagan-Harkin Marketing Bill
Boston Globe, March 17, 2013
Attorney generals to Congress: Don’t let for-profit colleges use federal grants and loans for advertising

SEC Investigating Education Management Corp. Regarding Goodwill and Bad Debt Allowances
Pittsburgh Post-Gazette, March 23, 2013
EDMC target of SEC investigation
Massachusetts AG Sues For-Profit School for Misleading Students with Deceptive Ads
Boston Globe, April 3, 2013
AG Coakley sues Sullivan & Cogliano, a for-profit Brockton school, for alleged deceptive ads
http://www.boston.com/businessupdates/2013/04/03/coakley-sues-sullivan-cogliano-for-profit-brockton-school-for-alleged-deceptive-ads/iVitiDFwtdA8Z2CLgt0TGN/story.html

EXAMPLES OF EDITORIALS CALLING FOR GREATER OVERSIGHT OF FOR-PROFIT COLLEGES:

2011

Eugene Register Guard
4-Jun-11
Editorial — Rein in for-profit colleges
http://special.registerguard.com/web/opinion/26333526-47/colleges-profit-students-money-percent.html.csp

The New York Times
5-Jun-11
Editorial — Stopping Fraud at Trade Schools
http://www.nytimes.com/2011/06/06/opinion/06mon3.html?_r=0

St. Petersburg Times
8-Jun-11
Editorial — New rules let for-profit schools off the hook

The Daily Iowan
9-Jun-11
Editorial — Harkin-backed regulations of for-profit colleges don’t go far enough

New York Times
10-Jun-11
Editorial — Subprime Education
http://www.nytimes.com/2011/06/11/opinion/11sat2.html?_r=0

Journal Gazette (Fort Wayne)
10-Jun-11
Editorial — Student borrowers, beware
http://www.journalgazette.net/article/20110610/EDIT07/306109939/1147/EDIT07

Orlando Sentinel
12-Jun-11
Editorial — College debt bubble

Lexington Herald Leader
14-Jun-11
Editorial — Getting money’s worth not partisan
Palm Beach Post
17-Jun-11
Editorial — The taxpayers got schooled

Orlando Sentinel
19-Jun-11
Editorial — Students at for-profit colleges are taking on debt they can't handle
20110617_1_students-at-for-profit-colleges-institute-for-college-access-public-colleges

Orlando Sentinel
3-Jul-11
Editorial — Aggressive recruiting and loan defaults at for-profit schools demand more oversight
20110701_1_loan-defaults-student-loans-medvance-institute

Louisville Courier-Journal
29-Jul-11
Editorial — Ripping off students
http://www.courier-journal.com/article/20110731/OPINION01/307310015/Editorial-Ripping-off-
students

Journal Gazette (Fort Wayne)
10-Aug-11
Editorial - Welcome student aid scrutiny
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Appendix C

Office of the Comptroller of the Currency May 14, 2013 letter to the Consumer Bankers Association
May 14, 2013

Mr. Richard Hunt
President and CEO
Consumer Bankers Association
1225 Eye Street, Suite 550
Washington, DC 20005

Dear Mr. Hunt,

Thank you for your letter of March 27, 2013, regarding private student lending forbearance programs. We appreciate your concerns and recognize the challenges that banks face in balancing workout program terms with prudent accounting and safety and soundness practices.

The interagency “Uniform Classification and Account Management Policy” (OCC Bulletin 2000-20) provides longstanding guidance for controlling the use of extensions, deferrals, renewals and re-writes of closed-end loans. OCC recognizes that some borrowers transitioning from school to the job market can experience delays in achieving full employment and may not have sufficient resources to begin repayment immediately. To address this aspect of student lending and some of the unique elements in repayment sources, in August 2010 the OCC issued guidance to examiners interpreting how to apply the principles of OCC Bulletin 2000-20 to private student loans. In particular, besides the regular six-month grace period immediately following separation, the guidance allows institutions to offer an extended grace period of up to six months for borrowers experiencing financial hardship. This gives private student loan borrowers up to twelve months after leaving school to obtain employment and transition to repayment. The guidance also allows in-school deferments and, in some cases, modifications of student loans. No other unsecured consumer loan has a grace period or extended grace period option.

Your letter asks us to review two measures you believe could assist recent graduates temporarily struggling to find employment. We are always interested in receiving suggestions as to how banks and the OCC can work together to help students as they transition from school to the workplace, and we thank you for taking the time to make us aware of your ideas. To help you work prudently with troubled borrowers, we are happy to clarify how each would be viewed in the context of regulatory reporting and loan modification guidelines.

1. Permitting banks to offer graduated repayment (including interest-only) when a loan enters repayment or soon thereafter. CBA suggests this be permitted during the first three to four years of repayment, with full amortization and no principal forgiven. Such a loan should not be classified as a “Troubled Debt” since graduated repayment would not result in a concession in the long term. Such alternate payment terms would be tailored to the individual circumstances of student loan borrowers.

Graduated payment terms can be an acceptable modification structure for troubled borrowers. Lowering monthly payments has proven an important characteristic for successful modification structures, and graduated payments are used in other programs such as the Home Affordable Mortgage Program (HAMP)
to prevent payment shock and help borrowers transition to stable, structured, sustainable terms. In addition, it may also be appropriate for borrowers to make graduated payments, consistent with ability to pay, during the regular or the extended grace period. However, interest-only repayment programs do not reduce the borrower’s outstanding liability or the bank’s credit exposure, and thus, raise significant concerns. Ultimately, interest-only payments benefit neither of the parties involved in the loan. It would seem that lenders can achieve the desired result – making loan payments more affordable to student borrowers – by reducing or waiving the interest portion of payments, which we believe is a more common and prudent method of making payments affordable and mitigating risk as students transition into the workplace.

For financial reporting and allowance purposes, a long-term modification of the loan structure to allow graduated payments for a borrower having financial difficulties would generally be considered a troubled debt restructure (TDR). A three- to four-year change in payment terms falls clearly within the realm of a concession, and granting the change due to unemployment, or under-employment, satisfies the financial-difficulties portion of the TDR standard. While tailoring payment terms to individual circumstances is appropriate, and we recognize and support the potential loss mitigation benefits of modifications, financial reporting and loan-loss reserve practices need to accurately reflect the actual quality of the underlying exposures, including TDR recognition.

2. For existing loans in repayment, more flexibility in offering forbearance, also without the triggering of a TDR classification.

As noted above, the OCC recognizes there are unique aspects to student lending and has advised examiners to allow extended grace periods, even up to 12 months, when necessary, as borrowers transition from school to full-time employment. However, we also believe that once repayment has begun, private student loans generally should not be treated differently from other consumer loans except in cases where the borrower returns to school.

We believe OCC Bulletin 2000-20 provides reasonable flexibility for designing forbearance program terms once repayment has begun. Implicit in that flexibility is the expectation that institutions work diligently to understand the nature and depth of the borrower’s hardship and tailor forbearance programs appropriately. Significant term extensions or non-amortizing payments for unemployed (or under-employed) borrowers are generally not appropriate since they tend to be speculative and do not address the underlying issues prudently and directly. Rather, forbearance programs should be designed to mitigate risk and improve positions immediately and should not be used to delay or defer loss recognition or speculate on economic trends or conditions. For example, temporary forbearance could be appropriate if a borrower has low current income but can demonstrate a reasonable prospect of increased income in the foreseeable future.

Similarly, financial reporting needs to be clear, consistent and objective. Offering prudent forbearance or modification programs is encouraged, but does not relieve lenders of their fiduciary responsibility to ensure regulatory reports and financial statements are accurate and fairly represent the financial condition of the institution and its assets. Institutions offering student lending modification programs must follow generally accepted accounting principles (GAAP) to ensure those programs are accurately reflected in the institution’s regulatory reports and financial statements. This includes the identification of TDRs and a complete analysis of the allowance for loan and lease losses (ALLL) related to student loan modification efforts.

We do recognize the special issues that can arise in the context of private student loans. In that context, we would be happy to engage in dialogue with you and other interested parties concerning flexible and creative means of addressing those issues that do not involve non-amortization or interest-only payments
within the parameters of existing guidance and GAAP. Of course, appropriate solutions should reflect safe and sound banking principles, compliance with all applicable law, and the unique factors involved in student loans.

I hope this is responsive to your concerns. If you have questions or wish to continue the discussion, please contact Robert Piepergerdes, Director for Retail Credit Risk, at (202) 649-6670.

Sincerely,

[Signature]

Thomas J. Curry
Comptroller of the Currency
Appendix D

April 2013 ITT document on its “Opportunity Scholarships”
Opportunity Scholarship
The primary purpose of the Opportunity Scholarship (the “OS”) is to encourage certain students to commit to pursuing their educational goals. The OS is only available to eligible students attending classes at an ITT Technical Institute in an associate degree program of study (“AP Students”). At the end of each quarter that an eligible AP Student is enrolled in an associate degree program, beginning with the quarter that starts on March 18, 2013, the school will determine if the eligible AP Student qualifies for an OS award for that quarter. If the eligible AP Student qualifies for a particular quarter, the eligible AP Student will receive an OS award in the form of a retroactive reduction of the amount of tuition and fees charged to the eligible AP Student for the course(s) of the associate degree program of study taken by the eligible AP Student in that quarter.

The amount of an OS award to an eligible AP Student in any particular quarter will be based on the eligible AP Student’s demonstrated need. An eligible AP Student’s demonstrated need will be determined by the school, in its sole discretion, based on the AP Student’s expected family contribution toward his or her tuition and fees owed to the school for that quarter. The maximum amount of the OS awards for all quarters for which an AP Student may be eligible and qualify will not exceed, in total, $25,000.

Eligibility Requirements – To be eligible for the OS, an AP Student must attend one or more courses in an associate degree program of study at the school in a quarter that begins on or after March 18, 2013. The first quarter of attendance for which an AP Student is eligible to receive an OS award, however, is:

- the first quarter of the AP Student’s next academic year that would start on or after March 18, 2013, if the AP Student:
  - was attending one or more courses in an associate degree program of study at an ITT Technical Institute at any time in the quarter that began on December 10, 2012 (“12/12 Quarter”); and
  - remained continuously enrolled in his or her associate degree program of study at an ITT Technical Institute; or
- the first quarter of the AP Student’s first academic year that starts on or after March 18, 2013, if the AP Student was not attending one or more courses in an associate degree program of study at an ITT Technical Institute at any time in the 12/12 Quarter.

Qualification Requirements – To qualify for an OS award for a particular quarter, an eligible AP Student must:

- be enrolled at all times during that quarter in courses in his or her associate degree program of study at the school that represent at least eight quarter credit hours; and
- at the end of that quarter, be making satisfactory academic progress and have an overall cumulative grade point average of at least 2.0 for all courses taken in his or her associate degree program of study.

Upon admission to an associate degree program of study at the school, a student must contact the school’s Finance Department to determine if he or she is eligible for the OS. If the school determines that the student satisfies the eligibility requirements of the OS, the eligible AP Student will have the opportunity to qualify for an OS award for each quarter that the AP Student remains enrolled in his or her associate degree program of study at the school, beginning with the student’s first quarter of eligibility. An eligible AP Student who qualifies for an OS award for any particular quarter will not be entitled to any other institutional scholarship in connection with the AP Student’s enrollment in his or her associate degree program of study during that quarter. The school may, at any time in its sole discretion, terminate the OS, which termination will be effective as of the start of the next quarter.
Appendix E

Shattering Common Myths about Default

By Kelly Kaelin
On the surface, default may seem like a simple enough issue — the more that a student borrows, the greater the likelihood that the student will default. But is that true?

By comparing some commonly held assumptions about the factors that impact student loan default rates with data examined by TG’s research and analytical services department, this article seeks to establish some truths while shattering some myths about default.

The following is a series of assertions pertaining to potential default risks and causes; each is followed by corresponding analysis that either confirms or refutes the hypothesis put forth in the assertion.

The further a borrower progresses in a program of study (even if the program is not completed), the less likely the borrower will default. TRUTH!

Research shows that the further a borrower progresses into his or her program of study, the less likely it is that the borrower will default. Although borrowers who attend school longer often end up borrowing more, they also default less frequently on average. Among borrowers who reach the same academic levels, however, those who have greater amounts of debt have a slightly greater likelihood of default.

### Default Rates of TG Stafford Borrowers — Fiscal Year (FY) 2009 Cohort by Highest Academic Level

<table>
<thead>
<tr>
<th>Highest Academic Level</th>
<th>Number in Repayment</th>
<th>Default Number</th>
<th>Default Percentage</th>
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<tbody>
<tr>
<td>1</td>
<td>65,870</td>
<td>11,459</td>
<td>17.4</td>
</tr>
<tr>
<td>2</td>
<td>30,014</td>
<td>2,938</td>
<td>9.8</td>
</tr>
<tr>
<td>3</td>
<td>22,697</td>
<td>1,398</td>
<td>6.2</td>
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<tr>
<td>4</td>
<td>41,439</td>
<td>1,871</td>
<td>4.5</td>
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<tr>
<td>5</td>
<td>5,921</td>
<td>304</td>
<td>5.1</td>
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<tr>
<td>Graduate/Professional</td>
<td>34,247</td>
<td>963</td>
<td>2.8</td>
</tr>
<tr>
<td>Total</td>
<td>200,188</td>
<td>18,933</td>
<td>9.5</td>
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</table>

### Default Rates of TG Stafford Borrowers — FY 2009 Cohort by Amount Borrowed

<table>
<thead>
<tr>
<th>Amount Borrowed</th>
<th>Number in Repayment</th>
<th>Default Number</th>
<th>Default Percentage</th>
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</thead>
<tbody>
<tr>
<td>Up to $2,499</td>
<td>19,679</td>
<td>2,415</td>
<td>12.3</td>
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<tr>
<td>$2,500 to $5,000</td>
<td>42,762</td>
<td>5,668</td>
<td>13.3</td>
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<td>$5,001 to $7,500</td>
<td>38,777</td>
<td>5,153</td>
<td>13.3</td>
</tr>
<tr>
<td>$7,501 to $10,000</td>
<td>15,486</td>
<td>1,155</td>
<td>7.5</td>
</tr>
<tr>
<td>$10,001 to $15,000</td>
<td>28,737</td>
<td>1,852</td>
<td>6.4</td>
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<tr>
<td>$15,001 to $25,000</td>
<td>31,565</td>
<td>1,536</td>
<td>4.9</td>
</tr>
<tr>
<td>$25,001 to $50,000</td>
<td>19,097</td>
<td>1,014</td>
<td>5.3</td>
</tr>
<tr>
<td>$50,001 and higher</td>
<td>4,085</td>
<td>120</td>
<td>2.9</td>
</tr>
<tr>
<td>Total</td>
<td>200,188</td>
<td>18,933</td>
<td>9.5</td>
</tr>
</tbody>
</table>

A borrower with split loans (i.e., loans held by multiple loan holders) has a higher likelihood of default than a borrower whose loans are held by one holder. MYTH!

Conventional thought is that a split portfolio could create confusion for a borrower, disrupting his or her ability to repay the borrower’s loans successfully, and possibly increasing the likelihood of default. Although TG is just now conducting research on split loans, so far there is no evidence to support this assumption.
If a borrower is going to default, it will most likely happen immediately upon entering repayment. MYTH!

While many defaults occur soon after borrowers enter repayment, the truth is that almost half of all defaults occur after the third year of repayment. At the same time, the borrowers who become delinquent by the end of the second year of repayment account for about 80 percent of all borrowers who will ever become delinquent. The upshot is that about 90 percent of eventual defaults are associated with the borrowers who become delinquent within the first two years of repayment.

Borrowers Who Defaulted in First Two or Three Years — FY 2003 Cohort by School Sector

<table>
<thead>
<tr>
<th>School Sector</th>
<th>Proportion of borrowers who defaulted Within 2 Years</th>
<th>Within 3 Years</th>
<th>After 3 Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>For-Profit</td>
<td>20.4%</td>
<td>50.0%</td>
<td>50.0%</td>
</tr>
<tr>
<td>Public Four-Year</td>
<td>32.6%</td>
<td>53.9%</td>
<td>46.1%</td>
</tr>
<tr>
<td>Private Four-Year</td>
<td>29.4%</td>
<td>52.9%</td>
<td>47.1%</td>
</tr>
<tr>
<td>Two-Year</td>
<td>27.9%</td>
<td>52.6%</td>
<td>47.4%</td>
</tr>
</tbody>
</table>

Working full time while in school can negatively impact repayment. TRUTH!

Students who work full time tend to cut back on course loads, are less likely to stay in school, and are less likely to complete their educations — factors that are related to a greater likelihood of default. Striking the proper balance between work and borrowing appears to be the key. Interestingly, research indicates that borrowers who worked part time while in school have about half the default rate of borrowers who did not work at all.

Academic performance correlates to whether a borrower is successful in repayment. TRUTH!

The borrower’s academic performance in postsecondary education, as measured by such indicators as college grade point average (GPA), has the strongest connection to repayment success, trumping the influence of demographic factors and college preparedness. If a borrower did well in his or her academic program, chances are higher that the borrower will not default on his or her federal student loans.

An unsubsidized Stafford Borrower is more likely than a subsidized Stafford borrower to default. MYTH!

Any subsidized federal student loan borrowing is associated with higher default rates. Borrowers who take out subsidized Stafford loans only and borrowers who take out both subsidized and unsubsidized Stafford loans have about the same default rate, which is about two and a half times as high as the default rate of borrowers who take out only unsubsidized Stafford loans.

Default Rates of TG Stafford Borrowers — FY 2009 Cohort by Type of Stafford Loan(s) Borrowed

<table>
<thead>
<tr>
<th>Type of Stafford Loan(s)</th>
<th>Number in Repayment</th>
<th>Number in Default</th>
<th>Percentage in Default</th>
</tr>
</thead>
<tbody>
<tr>
<td>Both</td>
<td>117,278</td>
<td>11,901</td>
<td>10.1</td>
</tr>
<tr>
<td>Subsidized Only</td>
<td>55,152</td>
<td>5,928</td>
<td>10.7</td>
</tr>
<tr>
<td>Unsubsidized Only</td>
<td>27,758</td>
<td>1,104</td>
<td>4.0</td>
</tr>
<tr>
<td>Total</td>
<td>200,188</td>
<td>18,933</td>
<td>9.5</td>
</tr>
</tbody>
</table>

Are You Informed?

So, how did you do?

5 - 6 right: Wow! You really know your borrowers!

4 or below: Like many of us, you may need to reconsider the dynamics of default.

Before developing a packaging policy, it’s important to decide whether research bears out our long-held beliefs. For example, if a school believes that heavy borrowing tends to lead to default, it may establish a policy of not awarding loans or encouraging students to work so that they borrow conservatively. However, knowing that students who borrow to stay in school longer are less likely to default, while students who work full time are less likely to complete their programs and more likely to default, the school may want to reconsider its policy.

The more that a school stays informed about the documented risks and causes of default, the better equipped it is to positively affect its cohort default rate. The school can use its knowledge about default truths and myths to enlighten its administration and default management team, develop policies and procedures that are compliant with federal regulations, improve its student-counseling sessions, and help its borrowers achieve successful repayment.

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The data in this article are from TG’s internal database and three TG publications: Multivariate Analysis of Student Loan Defaulters at Texas A&M University by M. Steiner and N. Teszler (January 2005); Role of Work and Loans in Paying for an Undergraduate Education: Observations from the 2003-2004 National Postsecondary Student Aid Study (NPSAS) by R. McMillion (November 2005); and Digging Deeper: An Analysis of Student Loan Debt in Texas by M. Shook, J. Webster, and C. Fletcher (November 2010).
Appendix F

Examples of Misleading and/or Noncompliant “On-Time Completion Rate” Gainful Employment Program Disclosures
Examples of Misleading and/or Noncompliant “On-Time Completion Rate” Gainful Employment Program Disclosures  
December 12, 2012

On November 23, 2012, the Department of Education updated its guidance on gainful employment (GE) program disclosures. It instructs institutions that have not already updated their disclosures for the 2011-2012 award year to do so by no later than January 31, 2013. It reinforces previous guidance informing colleges that their GE program disclosures must be on each program’s home page, not a central web site. The updated guidance states:

GE Program disclosures must be displayed on the educational programs’ websites and on any promotional materials for the program. Specifically, institutions must prominently display the disclosures in a simple and meaningful manner. Additionally, any other web page containing general, academic, or admissions information about the GE Program must also contain a prominent and direct link to the single web page that contains all the required information.

The guidance also indicates that the disclosures are to include:

- Normal time to complete the program (e.g., one year certificate program)
- On-time graduation rate for completers (on-time completion is defined in 34 CFR 668.6(c))

This document provides examples of disclosures that:

- Misrepresent the on-time completion rates as graduation rates, do not specify the “normal time” to complete the program, and do not post the disclosures directly on the program web site (Lincoln, Everest)
- Do not specify the “normal time” to complete the program and do not post the disclosures directly on the program web site (ATI, Ashford)
- Are highly misleading (Strayer)
- Are not posted anywhere on the school’s web site (Harris School of Business)

Misrepresent the On-Time Completion Rates as Graduation Rates, Do Not Specify the “Normal Time” to Complete the Program, and Do Not Post the Disclosures on the Program Web Site

Example 1: Lincoln Group of Schools (Lincoln Technical Institute)

- The on-time completion rate is incorrectly described as the share of students who complete within “normal time;”
- The “normal time” to complete is not provided; and
• GE disclosures are not on the program web site. Instead they are listed only on a 22-page PDF containing the disclosures for multiple programs and campuses.

Sample program:  Computer Networking and Security (Diploma), NE Philadelphia
The header states that the "Normal Time Completion Rate provides an indication of how many graduates were able to fulfill the program requirements within the published timeframe.” However, immediately below this it incorrectly states that the rate is the percentage of students who completed within “normal time”:

Students who completed within Normal Time  36%

The “normal time” is not specified in the disclosure or anywhere on the web site. On page 21 of the 22-paged PDF containing this disclosure, there is a glossary that states:

Normal Time Completion Rate: Of the students who graduated between 7/1/10 and 6/30/11, what percentage was able to fulfill the program requirements within the timeframe as published in the school catalog. [emphasis added]

However, even the campus’ 44-page school catalogue does not define normal time. Instead, it contains the following information:

approximate weeks to complete – day . . . 47 (including holidays and scheduled breaks)
approximate weeks to complete – eve . . . 74 (including holidays and scheduled breaks)

To find the gainful employment disclosures, one has to click on “student consumer information” at the bottom of the home page, or from a program page, select a location, and then select “gainful employment disclosure.” This leads to a pdf listing information for all the programs offered at that location, e.g.,

Example 2:  Everest Colleges and Institutes
• The on-time completion rate is incorrectly described as a “graduation rate”;
• The “normal time” to complete is not provided; and
• GE disclosures are not provided on the program web site. Instead, the program site links to a PDF containing the disclosures for all the programs on that campus.

Sample Program:  Medical Insurance and Billing Diploma, Bensalem, PA
The program web site incorrectly describes the on-time completion rate as a “graduation rate”:

For information on graduation rates, the median debt of students who complete this program and more, select a campus below to download.
Bensalem Program Disclosures

The PDF has disclosures for the entire campus, with definitions on the first page:

"On-Time Completion Rate” reflects the percent of graduates between July 1, 2010, and June 30, 2011, who completed their program within 100 percent of the normal time frame as described in the school catalog or enrollment agreement. [emphasis added]

For this specific program the PDF states:

On-Time Completion Rate: 56.49%

No school catalog or enrollment agreement indicating the normal time to complete the program could be found anywhere on the web site. The campus web site contains small text in a light-colored font saying “Download the Bensalem Campus Catalog.” However, the hyperlink does not take one to the catalog. Instead, it links to the url on which this text is found along with text saying “Please visit the campus for the most current addenda.”

Do Not Specify the “Normal Time” to Complete the Program and Do Not List the Disclosures on the Program Web Site

Example 1: ATI

- the “normal time” to complete is not provided anywhere; and
- GE disclosures are not provided on the program web site. Instead, the program site links to a PDF containing the disclosures for all the programs on that campus.

Sample Program: Air Conditioning, Heating and Refrigeration diploma, Dallas
The program web site includes a link to each campus’ “Program Disclosures PDF,” which states the following:

The On Time Graduation Rate is a calculation which demonstrates, based on the number of students who graduate within the 2010-2011 award year, the percentage of those students who completed their educational program on time based on the published program length (in weeks). The published program length assumes a student is attending full-time and passes each class without being required to repeat any courses. Students not attending full time or are required to repeat a class, are not counted as graduating on time.

<table>
<thead>
<tr>
<th>Program Description</th>
<th>OTG Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Conditioning, Heating &amp; Refrigeration</td>
<td>58%</td>
</tr>
</tbody>
</table>
The “published program length” could not be found anywhere on the web site.

Example 2: Ashford University

- The explanation of on-time completion is long and confusing;
- The length of time for “on-time completion” is not specified; and
- GE disclosures are not provided on the program web site. Instead, the program site has a link to a separate web page with the disclosures.

Sample Program: Bachelor of Arts in Business Administration.
There is a light grey tab on the program page labeled “Program Disclosures,” which links to a page with an impenetrable, five-paragraph explanation in a light grey font that does not specify the on-time length of the program:

On-Time Completion Rate:
The academic calendar for programs offered in the online modality at Ashford University is continuous, rather than defined by semester dates. Normally, students take one course at a time and move to the next course in the program sequence without a break. All courses begin on a Tuesday and end on a Monday five weeks later (undergraduate), or six weeks later (graduate). Opportunities to enroll in undergraduate or graduate programs are available up to 50 Tuesdays throughout the calendar year. There is generally one annual two-week Winter Break when courses are not scheduled. For example, the annual break for 2010-2011 occurred from December 21, 2010 to January 3, 2011.

Thus, the normal time for a full-time undergraduate student to complete a program may be calculated by multiplying the total number of courses in the program by five (5) weeks and adding two (2) weeks for each fifty (50) week period required to complete the program. For example, the normal time for completion of a program that consists of forty (40) classes would be calculated as follows:

40 classes x 5 weeks each = 200 weeks + 8 scheduled break weeks
= 208 weeks to complete the program within the normal timeframe.

Prior to July 1, 2011, online students could take a break of up to twenty-nine (29) days between classes without being withdrawn from the program. Beginning July 1, 2011, students may take a break of up to forty-five (45) days between classes without being withdrawn from the program, as long as they provide written confirmation of their intent to return. Any break of this type may affect a student’s ability to complete the program “on-time” as per
the methodology above for calculating the on-time program completion rate.

For the on-campus traditional modality, the academic calendar consists of two 16 week semesters per year. As such, the normal timeframe for completion of a bachelor’s program in this modality is four (4) years or 208 weeks. Select programs may have a normal timeframe of eight or nine semesters, such as those in the College of Education or the BA in Professional Accounting.

The on-time program completion rate represents the percentage of students who completed their program in the referenced financial aid award year (July 1 to June 30) within the normal timeframe for that program out of the total students who completed the program in that year. For example, if 100 students completed a program between July 1, 2009 and June 30, 2010, and 60 of those students finished the program within the normal time for completion, the on-time completion rate would be 60%. If there were no completers in the timeframe referenced, then "N/A" will appear.

Online 98%
University Total:*98%
*University total reflects an aggregation of both modalities

**On-Time Completion Rates Are Highly Misleading**

**Example: Strayer**

- The on-time completion rates are labeled “On-Time Graduation Rates” and appear to be inflated by using a highly unusual definition of “on-time” completion. They are also out of date.

Strayer’s on-time completion rates appear to be based on the following definitions of “on-time” completion:

- Certificate/diploma programs: 4.5 years
- Associate programs: 3.5 years
- Bachelor programs: 6 years

**Sample Program: Diploma in Acquisition and Contract Management.** The program page includes the following disclosures:

**Program Length**

Strayer University students are mostly working adults who earn their degrees at their own pace and on their own schedule. Most students attend part-time, and the normal time to complete this program is 4.5 years.
The applicable U.S. Department of Education regulation does not permit the disclosure of the on-time graduation rate or median debt amounts for this program.

Note: The applicable U.S. Department of Education regulation does not permit the disclosure of the on-time graduation rate or median debt amounts for this program.

Sample Program: Associate of Arts in Criminal Justice. The program page includes the following disclosure:

Program Length
Strayer University students are mostly working adults who earn their degrees at their own pace and on their own schedule. Most students attend part-time, and the normal time to complete this program is 3.5 years.

On-Time Graduation Rate
100% of our students who graduated from this program between July 1, 2009 and June 30, 2010, did so within 3.5 years.

Sample Program: BA in Business Administration. The program page includes the following disclosure:

Program Length
Strayer University students are mostly working adults who earn their degrees at their own pace and on their own schedule. Most students attend part-time, and the normal time to complete this program is 6 years.

On-Time Graduation Rate
96% of our students who graduated from this program between July 1, 2009 and June 30, 2010, did so within 6 years.

The data are all from 2009-2010 even though more recent data are available.

On-Time Completion Rates are Not Provided

Example: Harris School of Business
We could not find the on-time completion rates for this chain of schools on its web site. A small “Student Consumer Information” link at the bottom of its home page guides the user to a consumer information page for all institutions in the Premier Education Group. However, this page links to other pages that eventually link only the Retention Rate and Graduation Rate section of the school's College Navigator page.